

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

HAMPTON FEEDLOT, INC., et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 99-4206-CV-C-SOW-ECF
)	
JEREMIAH W. NIXON, Attorney)	
General of the State of Missouri,)	
et al.,)	
)	
Defendants.)	

ORDER

Recently, this Court held a hearing on the plaintiffs' Complaint for Declaratory Judgment and request for a permanent injunction. Plaintiffs brought this action seeking a declaration that portions of Senate Bill 310, enacted by the 90th General Assembly and codified as §§ 277.200, 203, 209, and 212, RSMo ("the Statute"), are unconstitutional. These sections, which deal with price discrimination in livestock purchasing, were to go into effect on August 28, 1999. On August 27, 1999, this Court entered a Temporary Restraining Order restraining the defendants from enforcing those sections. Pursuant to Federal Rule of Civil Procedure 65(a)(2), the trial on the merits of this action and the hearing on the preliminary and permanent injunction were consolidated and held on March 20-21, 2000.

The plaintiffs argue that the Statute violates Article 1, Section 8, Clause 3, of the United States Constitution. More specifically, the plaintiffs argue that the precedent establishing what is known as the Dormant Commerce Clause applies to this case. In addition to the Commerce Clause argument, the plaintiffs argue that the Statute is unconstitutionally vague.

I. Findings of Fact

1. Senate Bill 310 became effective August 28, 1999, and is codified as §§ 277.200 - 277.215, RSMo. This Court enjoined enforcement of sections 200, 203, 209, and 212 of the Statute on August 27, 1999, pending a hearing on the issues presented by plaintiffs.

2. The applicable sections of the Statute provide:

Section 277.200. As used in sections 277.200 to 277.215, the following terms mean:

(1) "Department", the department of agriculture;

(2) "Livestock", live cattle, swine or sheep;

(3) "Packer", a person who is engaged in the business of slaughtering livestock or receiving, purchasing or soliciting livestock for slaughtering, the meat products of which are directly or indirectly to be offered for resale or for public consumption. Packer includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer. Packer does not include a cold storage plant, a frozen food locker plant exempt from federal inspection requirements, a livestock market or livestock auction agency, any cattle buyer who purchases twenty or fewer cattle per day or one hundred or fewer cattle per week, any hog buyer who purchases fifty or fewer hogs per day or two hundred fifty or fewer hogs per week, or any sheep buyer who purchases fifty or fewer sheep per day or two hundred fifty or fewer sheep per week.

Section 277.203. A packer purchasing or soliciting livestock in this state for slaughter shall not discriminate in prices paid or offered to be paid to sellers of that livestock. The provisions of this section shall not be construed to mean that a price or payment method must remain fixed throughout any marketing period. The provisions of this section shall not apply to the sale and purchase of livestock if the following requirements are met:

(1) The price differential is based on the quality of the livestock, if the packer purchases or solicits the livestock based upon a payment method specifying prices paid for criteria relating to carcass merit; actual and quantifiable costs related to transporting and acquiring the livestock by the packer; or an agreement for the delivery of livestock at a specified date or time; and

(2) After making a differential payment to a seller, the packer publishes information relating to the differential pricing, including the payment method for carcass merit,

transportation and acquisition pricing, and an offer to enter into an agreement for the delivery of livestock at a specified date or time according to the same terms and conditions offered to other sellers.

Section 277.209.

1. Any agreement made by a packer in violation of sections 277.200 to 277.215 is voidable.
2. Any packer acting in violation of sections 277.200 to 277.215 is guilty of a class A misdemeanor.

Section 277.212.

1. The attorney general shall enforce the provisions of sections 277.200 to 277.215. The department of agriculture shall refer violations of the provisions of sections 277.200 to 277.215 to the attorney general. The attorney general or any person injured by a violation of the provisions of sections 277.200 to 277.215 may bring an action pursuant to the provisions of chapter 407, RSMo, for any remedy allowed for unlawful merchandising practices.
2. A seller who receives a discriminatory price or who is offered only a discriminatory price in violation of the provisions of sections 277.200 to 277.215 may receive treble damages, costs and a reasonable attorney's fee.
3. Plaintiff Hampton Feedlot, Inc. ("Hampton") is a Missouri corporation and a feedlot located in Triplett, Missouri. Hampton feeds "fed cattle" until they are ready to sell and then sells them to various packers for slaughter. Hampton never owns the cattle that it feeds and sells. Hampton receives cattle from customers in eleven states, including Missouri, and sells them in Missouri.
4. Plaintiff GM Feedlot, Inc. ("GM") is a Missouri corporation and feedlot located near Appleton City, Missouri. GM feeds "fed cattle" until they are ready to sell and then sells them to various packers for slaughter. GM never owns the cattle that it feeds and sells. GM receives cattle from customers in ten states, including Missouri, and sells them in Missouri.

5. Plaintiff Bob Vandiver Cattle Co. (“Vandiver”) is a Missouri corporation located in Camden, Missouri. Vandiver acquires cattle when they are still considered “light cattle” and “backgrounds” them until they are ready for “finishing.” At that time, Vandiver either sends the cattle to a feedlot or feeds them itself until they are ready for sale to a packer for slaughter.
6. Plaintiff American Meat Institute (“AMI”) is an Illinois corporation and a national trade association representing packers and processors of meat and meat food products. AMI members acquire cattle and hogs from producers and feedlots in Missouri and other states.
7. Plaintiff Missouri Cattleman’s Association (“MCA”) is a trade association representing persons and entities that raise cattle for slaughter in Missouri.
8. Plaintiff Missouri Livestock Marketing Association (“MLMA”) is a trade association representing those persons and entities that operate auction markets for livestock.
9. Defendant Jeremiah W. Nixon is the Attorney General of Missouri and is responsible for the enforcement of the Statute.
10. Defendant John Saunders is the Director of Agriculture for the State of Missouri and is responsible for the enforcement of the Statute.
11. There are currently no packers that slaughter fed cattle in Missouri. Packers from other states come into Missouri to solicit and purchase cattle in Missouri.
12. There is currently only one packer located in Missouri that purchases hogs for slaughter in Missouri. In addition, packers from other states come into Missouri to solicit and purchase hogs in Missouri.
13. The Statute pertains to solicitations and purchases of livestock in Missouri for slaughter, and does not require the slaughter to occur in Missouri. Likewise, the Statute does not pertain to

solicitations and purchases of livestock in other states, regardless of where the livestock is eventually slaughtered.

14. Three primary methods of purchase of cattle are currently implemented in Missouri. One additional method, auction, is not covered by the statute.

15. Using the live on a cash basis method (“Live”), the animal is sold for a specified price per pound for the entire animal.

16. Using the flat in the meat method (“In the Meat”), the animal is sold for a specified price per pound for the animal without head, hide, hooves, and entrails.

17. Using the grade and yield method (“Grade and Yield”), the animal is sold for a specified price per pound based upon the grade combined with the yield of each animal as determined by an inspector for the U.S. Department of Agriculture. The grid method (“Grid”) is a variant of Grade and Yield.

18. The Live and In the Meat methods both involve substantial negotiation between the sellers, either an individual producer or feedlot representative, and the buyer for the packer.

19. The base price paid in Grade and Yield is usually set by the packer and applied to all cattle purchased using that method. Negotiations can occur, but are not common.

20. Hampton and Vandiver sell almost all of their cattle using the Live method.

21. While the ultimate decision rests with the buyer, as it does in all commercial transactions, producers and feedlots in Missouri are generally allowed to choose which method to utilize in selling their cattle.

22. The price offered by packers in negotiations under the Live or In the Meat methods involve both the buyer’s general knowledge of livestock and the Grade and Yield history of the

producer and feedlot.

23. The three main methods of purchase, Live, In the Meat, and Grade and Yield, each represent approximately one third of all cattle sales currently in Missouri.

24. Hogs are also marketed using these three methods, but Grade and Yield represents approximately half of all hog sales.

25. Hogs are more often sold using Grade and Yield because the genetic history of hogs is more consistent than cattle.

26. There is currently a wide variation in the genetic background for cattle, and this makes it more difficult to know the quality of cattle sold in Missouri. This inconsistency makes the Grade and Yield method less advantageous for cattle producers in Missouri.

27. The Statute requires packers and their buyers to pay the same price for the same quality livestock.

28. Both the state and individual producers are allowed to file a lawsuit enforcing the Statute. The packer can be held liable for treble damages for a violation of the Statute.

29. Any of the above methods of purchase are available under the Statute, due to “safe harbors” established by the Statute and subsequent rules.

30. Under the Statute, the only method available to be absolutely certain no discrimination is taking place is the Grade and Yield method.

31. Under the Statute, packers in Missouri will only utilize the Grade and Yield method of purchasing, and producers will not be allowed to choose other options.

32. If Grade and Yield is the only method of purchase utilized in Missouri, some Missouri producers will send their livestock to feedlots in other states to sell utilizing the other methods.

33. If Grade and Yield is the only method of purchase utilized in Missouri, some out-of-state producers will send their livestock to feedlots in other states to sell utilizing the other methods, instead of sending the livestock to feedlots in Missouri.
34. If unable to sell cattle utilizing the Live method, Vandiver will send its cattle to neighboring states for sale.
35. If unable to sell cattle utilizing the Live method, Hampton and GM will see a reduction in the number of producers using their services and may be forced to close.
36. The current estimate of total effect of money paid to by cattle producers, as agreed to by the parties, is a five-fold multiplier. Therefore, every dollar paid to by a producer or feedlot will result in a five dollar benefit to the Missouri economy.
37. The reduction in money paid to Hampton, GM, and Vandiver will result in a corresponding reduction in money introduced into the local economy in their respective communities. Using the current estimates, every dollar that Hampton, GM, and Vandiver do not receive as a result of a reduction in sales will result in a five dollar loss to the Missouri economy.
38. In 1999, Hampton's expenses totaled \$2,783,750. Of that, all but \$270,000 was spent in Missouri.
39. At present, price discrimination occurs in Missouri.
40. The Statute was enacted to eliminate price discrimination in an effort to protect small farmers in Missouri.
41. It is a goal of the MCA to improve the general quality of Missouri cattle to the point that Grade and Yield method would produce the best possible price for Missouri cattle.
42. The genetic quality of Missouri cattle is not yet to the point that Grade and Yield

consistently produces a higher price for the producers.

II. Conclusions of Law

The plaintiffs in this case are asking this Court for a declaration that the Statute is unconstitutional and a permanent injunction preventing the enforcement of the statute. The defendant argues that the Statute withstands constitutional scrutiny.

The plaintiffs' primary argument is that the Statute violates the Dormant Commerce Clause that has been read into the United States Constitution. The Commerce Clause reads "The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among several states" U.S. Const. Art. I, § 8, cl. 3. While the Commerce Clause is a source of federal power, a "Dormant" Commerce Clause has been established by Supreme Court precedent that imposes limits on state power.

The Dormant Commerce Clause applies to two primary situations. In the first, "a state regulation is per se invalid when it has an 'extraterritorial reach,' that is, when the statute had the practical effect of controlling conduct beyond the boundaries of the state." Cotto Waxo Co. v. Williams, 46 F.3d 790, 793 (8th Cir. 1995) (citation omitted). The second situation applies when the statute only burdens interstate commerce indirectly. "[I]f the challenged statute regulates evenhandedly, [but] burdens interstate commerce indirectly [it] is subject to a balancing test." Id. The statute is invalid under the balancing test only "if the burdens it imposes on interstate commerce are 'clearly excessive in relation to the putative local benefits.'" Id. (citing Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970)).

There is absolutely no dispute that the Statute involves interstate commerce, thereby

potentially falling within the reach of the Commerce Clause. There are no cattle slaughterhouses, and only one hog slaughterhouse, located in the State of Missouri. Therefore, almost all livestock purchases that will be regulated by the Statute are made by out-of-state buyers who travel into Missouri and then transport the livestock out of Missouri. Additionally, a substantial percentage of the cattle sold in Missouri originates in other states and is transported into Missouri for feeding and eventual sale. Therefore, the Statute will directly affect the flow of livestock both into and out of Missouri.

There is also no dispute that the Statute does not have an “extraterritorial reach.” This Statute only directly controls the conduct of purchasers in Missouri. Those same purchasers are free to pay any price they wish in other states, and are only restricted in the prices that they pay to competing Missouri producers.

Therefore, the constitutionality of the Statute under the Dormant Commerce Clause must be examined using the Pike balancing test. Under the Pike test, we must examine the burden on interstate commerce as well as the putative local benefits. Pike, 397 U.S. at 142. “If a legitimate local purpose is found, then the question becomes one of degree.” Id.

The purpose of the Statute is legitimate and even noble. This Court has little doubt that discrimination exists between the price that packers are willing to pay to a large producer and the price paid to a small producer. Therefore, the inquiry must be into the balance between the benefits of the Statute and the burden on interstate commerce.

The defendants argue that there is no actual burden on interstate commerce, thereby rendering the Commerce Clause inquiry moot. This Court respectfully disagrees. First, as pointed out by the plaintiffs, the burden need not be a direct burden such as a tariff. Interstate

commerce is burdened if the flow of interstate commerce is disrupted by the Statute. Cotto Waxo, 46 F.3d at 794. In Cotto Waxo, the Eighth Circuit Court of Appeals held that because a Minnesota statute caused Minnesota distributors to stop purchasing Cotto Waxo's products it burdened interstate commerce by disrupting the flow of commerce. Id.

Similarly, the effect of this Statute would be to disrupt the sales of Missouri cattle to out-of-state packers. In addition, the effect of the Statute will also greatly reduce the flow of cattle into Missouri for feeding in the feedlots and sale to packers. Unlike in Cotto Waxo, in which only a small loss of sales was shown, the potential harm to the Missouri economy could be dramatic. In 1999, for example, Hampton's expenses totaled \$2,783,750. Of these expenses, all but \$270,000 were spent in the state of Missouri. If Hampton has to close its doors, not only will Missouri lose \$2.5 million in direct economic activity, Missouri will lose \$12.5 million in economic impact. The bulk of this economic impact will be lost in the rural regions of Missouri that cannot afford to lose any more revenue. Therefore, instead of helping the family farmer, the closure of Hampton would likely result in severe economic damage to many family farmers.

On the other side of the balancing test is the putative local benefits. There is no question that price discrimination exists, and preventing this discrimination is a noble effort and would certainly appear, on its face, to be a strong local benefit. However, if the side effect of that benefit is to greatly reduce both the number of sales and the price paid, any putative local benefit disappears.

It is the decision of this Court that the Statute violates the Dormant Commerce Clause and is unconstitutional. Because it is unconstitutional under the Dormant Commerce Clause, this Court will not address the issue of vagueness that has also been raised by the plaintiffs.

On a personal note, I am well aware of the problems facing family farmers, both in Missouri and elsewhere. It is my firm belief that the loss of the family farm will do extremely harmful, and possibly irreversible, damage to the very fabric of this country. I applaud the efforts of the Governor and the Legislature to tackle this serious problem.

It is easy to see why this particular piece of legislation gained such support both in the Legislature and with the public. An effort to rid the industry of discrimination between the large producers and the small farmer is an important goal, but this particular implementation is both potentially harmful and unconstitutional.

The goal of the MCA to improve cattle breeding stock in Missouri to the point where Grade and Yield is the preferable method is an important one. There is no doubt that Grade and Yield is the only absolute way to prevent discrimination in purchasing. As the state with the second highest number of cow/calf operations in the country, perhaps taking the lead in improving the breeding of cattle would be a way to achieve the common goals of preventing discrimination and saving the family farm. Regardless of what method is chosen, I certainly hope the Governor and the Legislature continue their efforts to save the family farm.

Unfortunately, this Statute is not the proper method.

III. Conclusion

Accordingly, it is hereby

ORDERED that this Court's Temporary Restraining Order of August 27, 1999, preventing the enforcement of Sections 277, 200, 277.203, 277.209, and 277.212 of the Revised Statutes of Missouri is hereby converted to a Permanent Injunction. It is further

ORDERED that Sections 277, 200, 277.203, 277.209, and 277.212 of the Revised

Statutes of Missouri are unconstitutional and are invalid and unenforceable.

s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: 3-24-00